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Filing date: **07/20/2009**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91176065
Party	Defendant H. Co. Computer Products
Correspondence Address	RAYMOND R. TABANDEH CHRISTIE, PARKER & HALE, LLP. 350 West Colorado Blvd., Suite 500 Post Office Box 7068 PASADENA, CA 91109-7068 UNITED STATES pto@cph.com
Submission	Answer and Counterclaim
Filer's Name	Steven E. Lauridsen
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Signature	/Steven E. Lauridsen/
Date	07/20/2009
Attachments	Am Answer to Am Ntc of Opp; 2nd Am Counterclaim (HCCP).pdf (14 pages) (437638 bytes)

Registrations Subject to the filing

Registration No	2550628	Registration date	03/19/2002
Registrant	Lenovo (Singapore) Pte. Ltd. 151 Lorong Chuan, #02-01 New Tech Park SINGAPORE, 556741 SINGAPORE		

Goods/Services Subject to the filing

Class 009. First Use: 1999/10/00 First Use In Commerce: 1999/10/00
All goods and services in the class are requested, namely: COMPUTER HARDWARE; COMPUTER HARDWARE, NAMELY, AN ILLUMINATION DEVICE FOR COMPUTER KEYBOARDS AND TERMINALS IN THE NATURE OF A LIGHT THAT ILLUMINATES THE COMPUTER KEYBOARD AND COMPUTER TERMINAL, AND COMPUTER MANUALS SOLD THEREWITH

Registration No	2995709	Registration date	09/13/2005
Registrant	LENOVO (SINGAPORE) PTE. LTD. 9 CHANGI BUSINESS PARK CENTRAL 1 SINGAPORE 486048, SINGAPORE		

Goods/Services Subject to the filing

Class 009. First Use: 2003/06/13 First Use In Commerce: 2003/06/13
All goods and services in the class are requested, namely: COMPUTER SOFTWARE, NAMELY, OPERATING SYSTEM SOFTWARE AND APPLICATION SYSTEM SOFTWARE FOR USE IN CONTROLLING THE OPERATION AND EXECUTION OF PROGRAMS AND NETWORK FUNCTIONS ON A COMPUTER WORKSTATION; AND INSTRUCTIONAL MANUALS SOLD THEREWITH

Class 016. First Use: 2003/06/13 First Use In Commerce: 2003/06/13
All goods and services in the class are requested, namely: PRINTED MATERIALS, NAMELY

MAGAZINES, NEWSPAPERS, BOOKS, BROCHURES, INSTRUCTIONAL, EDUCATIONAL AND TEACHING MATERIAL DIRECTED TO USERS OF COMPUTER HARDWARE AND SOFTWARE FOR COMPUTER WORKSTATIONS

Registration No	2934258	Registration date	03/15/2005
Registrant	LENOVO (SINGAPORE) PTE. LTD. 9 CHANGI BUSINESS PARK, CENTRAL 1 SINGAPORE, 486048 SINGAPORE		

Goods/Services Subject to the filing

Class 009. First Use: 2003/06/13 First Use In Commerce: 2003/06/13
All goods and services in the class are requested, namely: COMPUTER HARDWARE; COMPUTER WORKSTATIONS COMPRISING A CENTRAL PROCESSING UNIT, DISPLAY MONITOR, KEYBOARD, HARD AND FLOPPY DISKETTE DRIVES AND OPTIONAL COMPUTER PERIPHERALS; AND INSTRUCTIONAL MANUALS SOLD THEREWITH

Registration No	3009301	Registration date	10/25/2005
Registrant	LENOVO (SINGAPORE) PTE. LTD. 9 Changi Business Park, Central1 Singapore, 486048 SINGAPORE		

Goods/Services Subject to the filing

Class 009. First Use: 2002/11/00 First Use In Commerce: 2004/02/00
All goods and services in the class are requested, namely: COMPUTER HARDWARE; COMPUTER SOFTWARE FOR USE AS A COMPUTER OPERATING SYSTEM; COMPUTER WORKSTATIONS COMPRISING CENTRAL PROCESSING UNIT, DISPLAY MONITOR, KEYBOARD, HARD AND FLOPPY DISKETTE DRIVES AND OPTIONAL COMPUTER PERIPHERALS; AND INSTRUCTION MANUALS SOLD AS A UNIT THEREWITH

Class 016. First Use: 2002/11/00 First Use In Commerce: 2004/02/00
All goods and services in the class are requested, namely: PRINTED MATTER AND PRINTED MATERIALS, NAMELY MAGAZINES, PERIODICALS, NEWSPAPERS, BOOKS, BROCHURES, INSTRUCTIONAL, EDUCATIONAL AND TEACHING MATERIAL DIRECTED TO USERS OF COMPUTER HARDWARE AND SOFTWARE FOR COMPUTER WORKSTATIONS

Registration No	2678462	Registration date	01/21/2003
Registrant	LENOVO (SINGAPORE) PTE. LTD. 151 LORONG CHUAN, #02-01 NEW TECH PARK SINGAPORE, 556741 SINGAPORE		

Goods/Services Subject to the filing

Class 009. First Use: 2000/06/26 First Use In Commerce: 2000/06/26
All goods and services in the class are requested, namely: equipment for performing scientific experiments, especially in schools or other educational institutions, namely, temperature probes, light probes, rotary motion probes and accessory kits sold therewith, photo event probes consisting of a light source and light detectors, distance probes utilizing sonar, and lasers for measuring purposes; and cables, adapters, modular connectors, power supply, base unit and prototyping cards for use therewith in conjunction with personal computers or other devices to display the data gathered using the included sensors and probes

Registration No	2931692	Registration date	03/08/2005
Registrant	LENOVO (SINGAPORE) PTE. LTD.		

	9 CHANGI BUSINESS PARK, CENTRAL 1 SINGAPORE, 486048 SINGAPORE
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Goods/Services Subject to the filing

Class 009. First Use: 2003/05/00 First Use In Commerce: 2003/05/00

All goods and services in the class are requested, namely: COMPUTER HARDWARE; COMPUTER MONITORS; VIDEO PROJECTORS; DATA PROJECTORS; DATA/VIDEO PROJECTORS; HAND HELD VIDEO/DATA PROJECTORS; AND INSTRUCTION MANUALS SOLD AS A UNIT THEREWITH

Class 016. First Use: 2003/05/00 First Use In Commerce: 2003/05/00

All goods and services in the class are requested, namely: PRINTED MATTER, NAMELY, BOOKS, BROCHURES, MAGAZINES, INSTRUCTIONAL MANUALS, WRITTEN PRESENTATIONS AND TEACHING MATERIALS, ALL IN THE FIELD OF COMPUTERS

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD**

<p>LENOVO (SINGAPORE) PTE LTD</p> <p>Opposer,</p> <p>v.</p> <p>H. CO. COMPUTER PRODUCTS</p> <p>Applicant.</p>	<p>Opposition No. 91176065</p> <p>AMENDED ANSWER TO AMENDED NOTICE OF OPPOSITION; SECOND AMENDED COUNTERCLAIM</p> <p>Mark: THINKCP Serial No.: 78/636,480 Filed: May 24, 2005</p>
<p>H. CO. COMPUTER PRODUCTS</p> <p>Counterclaimant,</p> <p>v.</p> <p>LENOVO (SINGAPORE) PTE LTD</p> <p>Counter-Opposer.</p>	

Applicant H. Co. Computer Products ("Applicant" or "HCCP") submits its Amended Answer to Opposer Lenovo PTE Ltd.'s ("Opposer" or "Lenovo") Amended Notice of Opposition in the above-identified Opposition proceeding pending before the United States Trademark Trial and Appeal Board. The numbers of the following paragraphs correspond to the paragraph numbers in the Amended Notice of Opposition:

1. HCCP lacks information sufficient to form a belief as to the truth of the allegations contained in Paragraph 1 of the Amended Notice of Opposition, and therefore denies the allegations.

2. HCCP lacks information sufficient to form a belief as to the truth of the allegations contained in Paragraph 2 of the Amended Notice of Opposition, and therefore denies the allegations.

3. HCCP admits the allegation contained in Paragraph 3 of the Amended Notice of Opposition that the opposed application contains goods related to computer hardware. HCCP denies all remaining allegations contained in Paragraph 3 of the Amended Notice of Opposition.

4. HCCP lacks information sufficient to form a belief as to the truth of the allegations contained in Paragraph 4 of the Amended Notice of Opposition, and therefore denies the allegations.

5. HCCP lacks information sufficient to form a belief as to the truth of the allegations contained in Paragraph 5 of the Amended Notice of Opposition, and therefore denies the allegations.

6. HCCP denies the allegations contained in Paragraph 6 of the Amended Notice of Opposition.

7. HCCP denies the allegations contained in paragraph 7 of the Amended Notice of Opposition.

8. HCCP denies the allegations contained in paragraph 8 of the Amended Notice of Opposition.

AFFIRMATIVE DEFENSES

1. Opposer is barred from the relief sought by the equitable doctrine of laches.

2. Opposer is barred from the relief sought by the equitable doctrine of acquiescence.

3. Opposer is barred from the relief sought by the equitable doctrine of estoppel.

WHEREFORE, H. Co. Computer Products requests this Opposition be dismissed with prejudice and that United States Trademark Application Serial No. 78/636,480 be allowed to issue as a registration.

COUNTERCLAIM

H. Co. Computer Products ("Applicant/Petitioner" or "HCCP"), a California corporation, believes it is being damaged by, and will continue to be damaged by, the registration of the subject marks of United States Trademark Registration Nos. 2,550,628; 2,995,709; 2,934,258; 3,009,301; 2,678,462; and 2,931,692 and petitions to cancel these registrations.

As grounds for the cancellation, Applicant/Petitioner alleges:

1. Lenovo (Singapore) PTE Ltd ("Opposer/Respondent" or "Lenovo") is the listed owner of United States Trademark Registration No. 2,550,628 for THINKLIGHT for "computer hardware; computer hardware, namely, an illumination device for computer keyboards and terminals in the nature of a light that illuminates the computer keyboard and computer terminal, and computer manuals sold therewith" in International Class 009, with a filing date of September 13, 1999, and issuance date of March 19, 2002, and an alleged date of first use in commerce of October 1999 ("the '628 Registration").

2. Lenovo is the listed owner of United States Trademark Registration No. 2,995,709 for THINKCENTRE for "computer software, namely, operating system software and application system software for use in controlling the operation and execution of programs and network functions on a computer workstation; and instructional manuals therewith" in International Class 009; and for "printed materials, namely magazines, newspapers, books, brochures, instructional, educational and teaching material directed to users of computer hardware and software for computer workstations" in International Class 016, with a filing date of August 26, 2002, an issuance date of September 13, 2005, and an alleged date of first use in commerce of June 13, 2003 ("the '709 Registration").

3. Lenovo is the listed owner of United States Trademark Registration No. 2,934,258 for THINKCENTRE for "computer hardware; computer workstations comprising a central processing unit, display monitor, keyboard, hard and floppy diskette drives and optional computer peripherals; and instructional manuals sold therewith" in International Class 009 with a filing date of August 26, 2002, an issuance date of March 15, 2005, and an alleged date of first use in commerce of June 13, 2003 ("the '258 Registration").

4. Lenovo is the listed owner of United States Trademark Registration No. 3,009,301 for THINKVANTAGE for "computer hardware; computer software for use as a computer operating system; computer workstations comprising central processing unit, display monitor, keyboard, hard and floppy diskette drives and optional computer peripherals; and instruction manuals sold as a unit therewith" in International Class 009 and for "printed matter and printed materials, namely magazines, periodicals, newspapers, books, brochures, instructional, educational and teaching material directed to users of computer hardware and software for computer workstations" in International Class 016, with a filing date of August 26, 2002, an issuance date of October 25, 2005, and an alleged date of first use in commerce of February 2004 ("the '301 Registration").

5. Lenovo is the listed owner of United States Trademark Registration No. 2,678,462 for THINKSTATION for "equipment for performing scientific experiments, especially in schools or other educational institutions, namely, temperature probes, light probes, rotary motion probes and accessory kits sold therewith, photo event probes consisting of a light source and light detectors, distance probes utilizing sonar, and lasers for measuring purposes; and cables, adapters, modular connectors, power supply, base unit and prototyping cards for use therewith in conjunction with personal computers or other devices to display the data gathered

using the included sensors and probes" in International Class 009, with a filing date of March 18, 1999, an issuance date of January 21, 2003, and an alleged date of first use in commerce of June 26, 2000 ("the '462 Registration").

6. Lenovo is the listed owner of United States Trademark Registration No. 2,931,692 for THINKVISION for "computer hardware; computer monitors; video projectors; data projectors; data/video projectors; hand held video/data projectors; and instruction manuals sold as a unit therewith" in International Class 009 and for "printed matter, namely, books, brochures, magazines, instructional manuals, written presentations and teaching materials, all in the field of computers" in International Class 016, with a filing date of December 12, 2002, and issuance date of March 8, 2005, and an alleged date of first use in commerce of May 2003 ("the '692 Registration") (the '628, '709, '258, '301, '462, and '692 Registrations are collectively referred to as "Lenovo's Registrations" and the subject marks of Lenovo's Registrations are collectively referred to as "Lenovo's Marks").

FIRST CLAIM (PRIORITY AND LIKELIHOOD OF CONFUSION)

7. HCCP realleges and incorporates by reference paragraphs 1 to 6, inclusive, of the counterclaim as if fully stated here.

8. Since at least as early as 1995, HCCP has been using "THINK," both as a trademark by itself and in combination with other terms and symbols and as a trade name ("HCCP's Marks"), in association with computers, computer peripherals, and computer accessories.

9. HCCP uses THINK COMPUTER SYSTEM and THINK COMPUTER SYSTEMS on desktops, tower computers, displays, and similar goods and has been doing so since at least as early as December 31, 1995.

10. HCCP uses THINKPOWER SYSTEM and THINKPOWER SYSTEMS on Desktops and Tower Computers and similar goods and has been doing so since at least as early as December 31, 2001.

11. HCCP uses THINK MEMORY PRODUCTS, THINK MEMORY MODULES, and THINK MEMORY on computer memory products, including memory modules and computer data storage products and similar goods and has been doing so since at least as early as December 31, 1996.

12. HCCP uses THINK NETWORKING PRODUCTS on networking product such as network switches, hubs, routers, interface cards, fabric (e.g., transceivers, multiplexors, converters, cabling), network tool kits, network appliances (e.g., e-mail servers, network security firewalls, dedicated network servers, etc.), external interfaces, hyper-connects (e.g, infiniband connectors), modems, DSL modems, VOIP solutions, and similar goods and has been using that mark on various computer networking products since at least as early as December 31, 1998.

13. HCCP uses THINK STORAGE SOLUTIONS, THINK STORAGE SYSTEMS, THINK STORAGE PRODUCTS, and THINK STORAGE SERVERS on storage servers, storage networks, storage clusters, storage systems, and related products and has been doing so since at least as early as August 1, 2001.

14. HCCP uses THINKTANK IQ, THINKTANK IQ SEVERS, THINKTANK I-SERIES, and THINKTANK Q-SERIES on high performance clusters, integrated high performance storage systems, digital media workstations, scientific workstation platforms, rendering farms, storage farms, "vertical" multi-core CPU based server platforms, Blade based server systems and has been doing so since at least as early as December 31, 2001.

15. HCCP uses THINK FIRE-N-ICE on external hard drives, external mobile RAID systems, external mobile JBOD systems, external CD/DVD/CDRW & CD/DVDRW drives and related goods and has been using that mark on these types of goods since at least as early as August 1, 2001.

16. HCCP uses THINK MOBILE COMPUTING on mobile computing products and has been doing so since at least as early as December 31, 2001.

17. Since prior to the filing date (and therefore the priority date) listed in the '628 Registration, HCCP has been using the following marks, as described above: THINK COMPUTER SYSTEM, THINK COMPUTER SYSTEMS, THINK MEMORY PRODUCTS, THINK MEMORY MODULES, THINK MEMORY, and THINK NETWORKING PRODUCTS. The goods listed in the '628 Registration are either identical or closely related to the goods on which HCCP uses these marks. The subject mark of the '628 Registration so resembles HCCP's marks as listed in this paragraph as to be likely to cause confusion, or to cause mistake, or to deceive when used in connection with the goods listed in the '628 Registration.

18. Since prior to the filing date (and therefore the priority date) listed in the '709 Registration, HCCP has been using the following marks, as described above: THINK COMPUTER SYSTEM, THINK COMPUTER SYSTEMS, THINKPOWER SYSTEM, THINKPOWER SYSTEMS, THINK MEMORY PRODUCTS, THINK MEMORY MODULES, THINK MEMORY, THINK NETWORKING PRODUCTS, THINK STORAGE SOLUTIONS, THINK STORAGE SYSTEMS, THINK STORAGE PRODUCTS, THINK STORAGE SERVERS, THINKTANK IQ, THINKTANK IQ SEVERS, THINKTANK I-SERIES, THINKTANK Q-SERIES, THINK FIRE-N-ICE, and THINK MOBILE COMPUTING. The goods listed in the '709 Registration are either identical or closely related to the goods on which

HCCP uses these marks. The subject mark of the '709 Registration so resembles HCCP's marks as listed in this paragraph as to be likely to cause confusion, or to cause mistake, or to deceive when used in connection with the goods listed in the '709 Registration.

19. Since prior to the filing date (and therefore the priority date) listed in the '258 Registration, HCCP has been using the following marks, as described above: THINK COMPUTER SYSTEM, THINK COMPUTER SYSTEMS, THINKPOWER SYSTEM, THINKPOWER SYSTEMS, THINK MEMORY PRODUCTS, THINK MEMORY MODULES, THINK MEMORY, THINK NETWORKING PRODUCTS, THINK STORAGE SOLUTIONS, THINK STORAGE SYSTEMS, THINK STORAGE PRODUCTS, THINK STORAGE SERVERS, THINKTANK IQ, THINKTANK IQ SEVERS, THINKTANK I-SERIES, THINKTANK Q-SERIES, THINK FIRE-N-ICE, and THINK MOBILE COMPUTING. The goods listed in the '258 Registration are either identical or closely related to the goods on which HCCP uses these marks. The subject mark of the '258 Registration so resembles HCCP's marks as listed in this paragraph as to be likely to cause confusion, or to cause mistake, or to deceive when used in connection with the goods listed in the '258 Registration.

20. Since prior to the filing date (and therefore the priority date) listed in the '301 Registration, HCCP has been using the following marks, as described above: THINK COMPUTER SYSTEM, THINK COMPUTER SYSTEMS, THINKPOWER SYSTEM, THINKPOWER SYSTEMS, THINK MEMORY PRODUCTS, THINK MEMORY MODULES, THINK MEMORY, THINK NETWORKING PRODUCTS, THINK STORAGE SOLUTIONS, THINK STORAGE SYSTEMS, THINK STORAGE PRODUCTS, THINK STORAGE SERVERS, THINKTANK IQ, THINKTANK IQ SEVERS, THINKTANK I-SERIES, THINKTANK Q-SERIES, THINK FIRE-N-ICE, and THINK MOBILE COMPUTING. The

goods listed in the '301 Registration are either identical or closely related to the goods on which HCCP uses these marks. The subject mark of the '301 Registration so resembles HCCP's marks as listed in this paragraph as to be likely to cause confusion, or to cause mistake, or to deceive when used in connection with the goods listed in the '301 Registration.

21. Since prior to the filing date (and therefore the priority date) listed in the '462 Registration, HCCP has been using the following marks, as described above: THINK COMPUTER SYSTEM, THINK COMPUTER SYSTEMS, THINK MEMORY PRODUCTS, THINK MEMORY MODULES, THINK MEMORY, and THINK NETWORKING PRODUCTS. The goods listed in the '462 Registration are either identical or closely related to the goods on which HCCP uses these marks. The subject mark of the '462 Registration so resembles HCCP's marks as listed in this paragraph as to be likely to cause confusion, or to cause mistake, or to deceive when used in connection with the goods listed in the '462 Registration.

22. Since prior to the filing date (and therefore the priority date) listed in the '692 Registration, HCCP has been using the following marks, as described above: THINK COMPUTER SYSTEM, THINK COMPUTER SYSTEMS, THINKPOWER SYSTEM, THINKPOWER SYSTEMS, THINK MEMORY PRODUCTS, THINK MEMORY MODULES, THINK MEMORY, THINK NETWORKING PRODUCTS, THINK STORAGE SOLUTIONS, THINK STORAGE SYSTEMS, THINK STORAGE PRODUCTS, THINK STORAGE SERVERS, THINKTANK IQ, THINKTANK IQ SEVERS, THINKTANK I-SERIES, THINKTANK Q-SERIES, THINK FIRE-N-ICE, and THINK MOBILE COMPUTING. The goods listed in the '692 Registration are either identical or closely related to the goods on which HCCP uses these marks. The subject mark of the '692 Registration so resembles HCCP's marks

as listed in this paragraph as to be likely to cause confusion, or to cause mistake, or to deceive when used in connection with the goods listed in the '692 Registration.

23. The continuous registration of Lenovo's Marks is causing injury to HCCP's business plans, is impairing HCCP's rights in HCCP's Marks, is inconsistent with HCCP's rights, and will continue to cause injury to HCCP until Lenovo's Registrations are cancelled in their entirety.

SECOND CLAIM (FRAUD ON THE USPTO)

24. HCCP realleges and incorporates by reference paragraphs 1 to 23, inclusive, of the counterclaim as if fully stated here.

25. HCCP alleges on information and belief that Lenovo or its agent made material false representations of fact during the prosecution of its applications that Lenovo knew or should have known were false and that, justifiably relying on the purported truth of these misrepresentations, the USPTO issued each of the following registrations.

26. In the statement of use filed in connection with the '462 Registration, Lenovo or its agent stated that the subject mark of the '462 Registration was being used on or in connection with modular connectors, base units and prototyping cards, temperature probes, light probes, photo event probes, distance probes, and lasers for measuring purposes. Research conducted on behalf of HCCP shows that Lenovo was not using the subject mark of the '462 Registration on or in connection with these goods as indicated in its statement of use as of the date the statement of use was filed.

27. In the statement of use filed in connection with the '692 Registration, Lenovo or its agent stated that the subject mark of the '692 Registration was being used on or in connection with video projectors, data projectors, data/video projectors, handheld video/data projectors, and

instruction manuals sold as a unit therewith. Research conducted on behalf of HCCP shows that Lenovo was not using the subject mark of the '692 Registration on or in connection with these goods as indicated in its statement of use as of the date the statement of use was filed.

28. In the statement of use filed in connection with the '709 Registration, Lenovo or its agent stated that that the subject mark of the '709 Registration was being used on or in connection with computer software, namely, operating system software and application system software for use in controlling the operation and execution of programs and network functions on a computer workstation and instructional manuals sold therewith; printed materials, namely magazines, newspapers, books, brochures, instructional, educational and teaching material directed to users of computer hardware and software for computer workstations. Research conducted on behalf of HCCP shows that Lenovo was not using the subject mark of the '709 Registration on or in connection with these goods as indicated in its statement of use as of the date the statement of use was filed.

29. The '462 Registration, the '692 Registration, and the '709 Registration should therefore be cancelled because Lenovo committed fraud on the USPTO in the procurement of those registrations.

WHEREFORE, HCCP requests that this counterclaim be sustained and that United States Trademark Registration Nos. 2,550,628; 2,995,709; 2,934,258; 3,009,301; 2,678,462; and 2,931,692 be cancelled.

Respectfully submitted,

CHRISTIE, PARKER & HALE, LLP

Date 7/20/09

By Gary J. Nelson
Gary J. Nelson
Attorneys for Applicant
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CERTIFICATE OF TRANSMISSION AND SERVICE


I certify that on July 20, 2009, the foregoing **AMENDED ANSWER TO AMENDED NOTICE OF OPPOSITION; SECOND AMENDED COUNTERCLAIM** is being electronically filed with:

Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

It is further certified that on July 20, 2009, the foregoing **AMENDED ANSWER TO AMENDED NOTICE OF OPPOSITION; SECOND AMENDED COUNTERCLAIM** is being served by mailing a copy thereof by first-class mail addressed to:

Stanley D. Ference III
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